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Supreme Court, U. S.
FILED
SEP 28 1973
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1973

No. 72-1733

CHRISTOPHER JOSEPH MUSSER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY MEMORANDUM FOR PETITIONER

Wallace L. Duncan, Esq.
Counsel for Petitioner
1700 Pennsylvania Ave., N.W.
Washington, D.C. 20006

Of Counsel

Watson & Hoffe

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The government in its memorandum filed in response to the petitions for certiorari in this case and in No. 72-6748 concedes the "certworthiness" of the issues raised in these

petitions and joins petitioner in urging that this Court resolve the conflict presently existing between the circuits (Memorandum at p. 6). The government goes further however, and, suggesting that the issues are not complex and that their disposition will not create lasting precedent, requests summary disposition of these cases (Memorandum at pp. 6-7). For a number of very substantial reasons, petitioner strongly objects to this somewhat novel suggestion and urges the Court to grant certiorari, require the parties to fully brief the case and to hear oral argument before reaching a decision on the merits.

While the question presented to the Court may be stated in rather simple terms, the legal and factual arguments that will determine its resolution are most complex. Certainly the issues raised by this petition are as complex as those raised in Ehlert v. United States, 402 U.S. 99. As to the precedent-setting value of the case, the government's memorandum estimates that there are approximately 5900 prosecutions now pending and 4600 cases under review for possible prosecution (Memorandum at p. 6, n. 8). Based upon the figures referred to above, the estimates of experts in the field (Petition of Writ for Certiorari, No. 72-6748

at pp. 20-21), and the number of recent decisions involving these issues (Petition for a Writ of Certiorari, No. 72-1733, p. 12 and Memorandum for the United States p.6), there can be no doubt but that a decision in this case will have a crucial effect upon the lives of a large number of individuals. Furthermore, it is quite possible that the future may see the return of the draft and the resurrection of much of the regulatory and statutory scheme involved in this litigation.

The government's suggestion that the Court grant certiorari and then make a summary disposition of the case places an unfair

and prejudicial burden on defendant. Despite our Petition for Certiorari and the government's acquiesence to our request for a Supreme Court ruling, petitioner is still without any assurance that certiorari will be granted. Petitioner has not fully presented the merits of his case to the Court and desires to do so before the Court renders any decision. Yet prior to the issuance of certiorari, the preparation of a brief on the merits may prove to be only a very expensive exercise in futility. For this reason, petitioner will not undertake to have a brief prepared and filed until we have been advised that

the Court will consider the merits of the case. If the government feels that the merits of its case are before the Court and that the question is not complex, it may waive its rights to brief and to argue the case but petitioner would not share these views and, if the Court were to grant certiorari, would want to fully brief and argue the case.

Counsel for petitioner has been advised that there are third parties who are interested in the issues raised in our Petition and who would like the opportunity to file amicus curiae briefs. Should the Court make a summary disposition of this case, the parties and the Court

would lose benefit of the evidence and arguments that these third parties would present.

In view of the government's concurrence with our position as to the need for the Court to rule on the issues raised by our Petition, we renew our request that a Writ of Certiorari be granted to review the judgment of the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,

Wallace L. Duncan
Duncan & Brown
1700 Pennsylvania Ave N.W.
Washington, D.C. 20006

Of Counsel

FRANCIS A. WATSON, JR.
RONALD A. RUBENSTEIN

WATSON & HOFFE
3700 Barrett Avenue
Richmond, California 94805